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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,020	12/05/2001	Gary B. Gordon	10002431-4	5593

7590 03/21/2005

AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P. O. Box 7599
Loveland, CO 80537-0599

EXAMINER

FORMAN, BETTY J

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

(2)

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/010,020

Applicant(s)

GORDON, GARY B.

Examiner

BJ Forman

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 8,10,11,14 and 15.

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____

BJ Forman
Primary Examiner
Art Unit: 1634

Continuation of 11. does NOT place the application in condition for allowance because:

In ¶ 4, Applicant asserts the examiner has mischaracterized fig 4 of Smith. In doing so, Applicant refers to Fig.5. As cited in the final office action, fig. 4 as described in 50 of Smith, centrifugal force is applied along vector 28 and mixing is at an oblique angle A relative to the y axis which is perpendicular to vector 28. Fig. 4 further illustrates the rotation (centrifugation) about x. Smith is mixing and centrifuging about different axis, otherwise, mixing would not occur. It is further noted that the claims are drawn to "more orthogonal to than along"...the phrase is very broad in that "more orthogonal" encompasses a minute amount. Given breadth of the claim, Smith anticipates the instant claims.

Applicant asserts that the Office has not correctly illustrated the axis of agitation in Robbins and specifically. In ¶ 12, Applicant asserts that because Robbins does not teach back and forth motion of the bottle, they do not teach the claimed agitation. The argument has been considered but not found persuasive because, Robbins specifically teaches that the fluids flow as the bottles rotate wherein the axial agitation is provided by maintaining the bottles and an angle with respect to the axis of rotation (Column 3, lines 14-30). Furthermore, as stated above, the claim is very broadly drawn to an axis more orthogonal than along. Because Robbins teaches differing angles, they teach the claimed more than.

Applicant argues that Robbins does not teach centrifugal force of more than 1G as required. The argument has been considered but is not found persuasive because the claims do not require the asserted force. In contrast, the claims centrifuging.....so that centrifugal force in excess of 1G urges. This does not require the asserted 1G force, but merely describes the conditions that occur when a force in excess of 1G is applied.

Applicant's comments regarding the double patenting rejections have been considered but are not found persuasive for the reasons stated above.

Applicant's further assert that the probe of Robbins is a functional opposite of the sample required in the instant claims and therefore cannot read on the instant claims. The argument has been considered but not found persuasive because the only function required in the claim is hybridization. Therefore, it is unclear how a probe and sample function differently.

Applicant argues that Robbins does not teach any "air". The comment is interesting, however, Fig 4 clearly indicates a fluid level in the bottle and Robbins describes agitation provides sloshing within the bottle to provide uniform wetting (Column 3, lines 14-30). Furthermore, Robbins does not provide a vacuum for removing air from the bottle, nor does the reference suggest the need to do so. A

Applicant asserts that the blot of Robbins is not an array. The assertion is noted. However, the claims do not define the claimed array over a blot. Therefore, the blot of Robbins is encompassed by the array.